

THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN APPLICATION

OF: THYES ET AL.

SERIAL No. 09/889,383

FILED:

FOR: A PROCESS FOR REDUCING THE CONTENT OF ETHYL 3-DIMETHYL-
LAMINO-2-PHENYLPROPIONATE IN SOLUTIONS OF ETHYL 2-DIME-
THYLAMINO-1-PHENYL-3-CYCLOHEXENE-1-CARBOXYLATE

CONFIRMATION No.: JUL 17 2002²⁹⁵²

TECH CENTER 1600/2900

RECEIVED

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231, on:

July 12, 2002

Date of Deposit

Herbert B. Keil

Person Making Deposit

Herbert B. Keil

Signature

July 12, 2002

Date of Signature

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

PETITION UNDER 37 C.F.R. §1.181
TO WITHDRAW THE HOLDING OF ABANDONMENT

Sir:

Applicants hereby petition to the Honorable Commissioner to withdraw the holding of abandonment indicated in the Notification dated July 08, 2002.

STATEMENT OF MATERIAL FACTS:

1. On September 04, 2001 (indicated date of Mailing), the U. S. PTO issued a Notification of Missing Requirements, providing for a two months period from the date of the Notification, with the option for extensions of time under 37 C.F.R. §1.136(a).

2. On November 08, 2001, applicants filed a response along with the the executed declaration and assignment papers, along with a check for \$280.00 to cover the surcharge pursuant to 37 C.F.R.

\$1.492(e) and a one month extension of time fee pursuant to 37 C.F.R. \$1.17(a) (copy of cover letter and returned receipt postcard appended).

3. On July 08, 2002, a Notification of Abandonment issued. The Notification indicates that the application is abandoned due to applicants' failure to timely respond to the notification of Missing Requirements.

M E M O R A N D U M

The Notification of Missing Requirements provides that the time period for reply may be extended pursuant to 37 C.F.R. \$1.136(a). Subsection (3) of 37 C.F.R. \$1.136(a) set forth

An authorization to charge all required fees, fees under \$1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.

(second sentence), and

Submission of the fee set forth in \$1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(third sentence).

In their Response dated November 08, 2001, applicants stated "Should there be any additional fees, kindly charge Deposit Account No. 11-0345." The cited statement clearly constitutes an authorization to charge all required fees as addressed in the second sentence of Rule 136(a)(3) which constitutes a constructive petition for an extension of time in the concurrent submission of the missing documents.

Additionally, in the receipt postcard, applicants' indicated the submission of a "1 month extension fee", which -pursuant to Rule 136(a)(3), third sentence- also amounts to a constructive petition for an extension of time.

Since applicants' Response dated November 08, 2001, did not relate to the filing of a copy of the the international application or the basic national fee necessary to enter the national stage (ie. Rule 1.8(a)(2)(F)), the provisions of the first subsection of that rule are


applicable. Applicants' Response to Notice of Missing Requirements was therefore timely submitted. A holding that the application Serial No. 09/889,383 does not meet the requirements of 35 U.S.C. §371 and 37 C.F.R. §1.494 and is abandoned as to the U.S.A. is, therefore, not deemed appropriate.

C O N C L U S I O N

Applicants therefore respectfully request that the holding of abandonment dated July 08, 2002, be withdrawn, that the application be assigned an application date in the U.S. PTO, and that the application be treated as a proper national stage application under 35 U.S.C. §371 and 37 C.F.R. §1.494. Favorable action is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,
KEIL & WEINKAUF


Herbert B. Keil
Reg. No. 18,967

1350 Connecticut Ave, N.W.
Washington, D.C. 20036
(202) 659-0100

Encl.: copy of "Response to Notice of Missing Requirements" dated November 08, 2001 (enclosures omitted)
date stamped copy return postcard

HBK/BAS



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November 8, 2001

THYES et al.
S.N. 889,383

Received: declaration, assignment, 1 month extension fee
check for \$280.00